



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 13 2015

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

REPLY TO THE ATTENTION OF:

Dick Peffley, General Manager
Lansing Board of Water and Light
1232 Haco Drive
Lansing, Michigan 48901

Re: Notice and Finding of Violation
Lansing Board of Water and Light
Lansing, Michigan

Dear Mr. Peffley:

The U.S. Environmental Protection Agency is issuing the enclosed Notice and Finding of Violation (NOV/FOV) to Lansing Board of Water and Light ("you" or "LBWL") under Section 113(a)(1) and (3) of the Clean Air Act, 42 U.S.C. § 7413(a)(1) and (3). For the reasons stated in the NOV, we find that you have violated and continue to violate the Clean Air Act, the Michigan State Implementation Plan, the Prevention of Significant Deterioration (PSD) rules, and Title V of the Clean Air Act at your Erickson Generating Station in Lansing, Michigan.

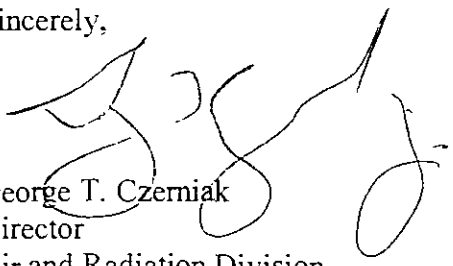
Section 113 of the Clean Air Act gives us several enforcement options. These options include issuing an administrative compliance order, issuing an administrative penalty order and bringing a judicial civil or criminal action.

We are offering you an opportunity to confer with us about the violations alleged in the NOV/FOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply and the steps you will take to prevent future violations. In addition, in order to make the conference more productive, we encourage you to submit to us information responsive to the NOV/FOV prior to the conference date.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contacts in this matter are Ethan Chatfield and Katharina Bellairs. You may call either at (312) 886-5112 or (312) 353-1669, respectively, to request a conference. You should make the request within 10 calendar days following receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,



George T. Czerniak
Director
Air and Radiation Division

cc: Barbara Rosenbaum, Compliance and Enforcement Section
Michigan Department of Environmental Quality

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

Lansing Board of Water and Light
Lansing, Michigan

Proceedings Pursuant to
Section 113(a)(1) and (3) of the
Clean Air Act, 42 U.S.C.
§ 7413(a)(1) and (3)

NOTICE OF VIOLATION

EPA-5-15-MI-02

NOTICE AND FINDING OF VIOLATION

The U.S. Environmental Protection Agency (EPA) is issuing this Notice and Finding of Violation (NOV/FOV) in accordance with Section 113(a)(1) and (3) of the Clean Air Act (Act), 42 U.S.C. § 7413(a)(1) and (3).

EPA finds that Lansing Board of Water and Light (LBWL) has violated and continues to violate the Act, 42 U.S.C. §§ 7401 *et seq.*, its implementing regulations, the Michigan State Implementation Plan (SIP), the Prevention of Significant Deterioration (PSD) rules, and its Title V Operating Permit at the Erickson Generating Station, in Lansing Michigan.

STATUTORY AND REGULATORY BACKGROUND

Prevention of Significant Deterioration

1. When the Act was passed in 1970, Congress exempted existing facilities, including the coal-fired power plants that are the subject of this Notice, from many of its requirements. However, Congress also made it quite clear that this exemption would not last forever. As the United States Court of Appeals for the D.C. Circuit explained in *Alabama Power v. Costle*, 636 F.2d 323, 400 (D.C. Cir. 1979), "[t]he statutory scheme intends to 'grandfather' existing industries; but...this is not to constitute a perpetual immunity from all standards under the PSD program." Rather, the Act requires grandfathered facilities to install modern pollution control devices whenever the unit is proposed to be modified in such a way that its emissions may increase.
2. On June 19, 1978, EPA promulgated regulations pursuant to Part C of Title I of the Act. 43 *Fed. Reg.* 26403 (June 19, 1978).
3. The PSD provisions of Part C of Title I of the Act establish specific provisions applicable to the construction and modification of sources located in areas designated as either attainment or unclassifiable for purposes of meeting the National Ambient Air Quality Standards (NAAQS). See 42 U.S.C. §§ 7470-7492. These statutory provisions and their

implementing regulations at 40 C.F.R. § 52.21, collectively known as the PSD program, provide that if a major stationary source located in an attainment area is planning to make a major modification, then that source must obtain a PSD permit before beginning actual construction. To obtain this permit, the source must, among other things, undergo a technology review and apply Best Available Control Technology (BACT); perform a source impact analysis; perform an air quality analysis and modeling; submit appropriate information; and conduct additional impact analyses as required.

4. EPA delegated the State of Michigan the authority to issue PSD permits using the federal PSD rules at 40 C.F.R. § 52.21 (via delegation letter dated September 26, 1988).
5. On September 16, 2008, EPA conditionally approved the State of Michigan's SIP approved PSD program under 40 C.F.R. § 52.21 (effective October 16, 2008). *73 Fed. Reg.* 53366. On March 25, 2010, EPA fully approved Michigan's PSD SIP provisions. *75 Fed. Reg.* 14352. The Michigan PSD SIP provisions are codified at Michigan Admin. Code R. 336.2801 to 336.2823.
6. The PSD regulations appearing at Michigan Admin. Code R. 336.2801 to 336.2823 were incorporated into and part of the Michigan SIP at the time of the major modification at issue in this NOV/FOV, and they have been approved by EPA and are federally enforceable requirements. All citations to the PSD regulations herein refer to the provisions of the Michigan SIP as applicable at the time of the projects.
7. Michigan Admin. Code R. 336.2802(3) provides that no new major stationary source or major modification to which the R. 336.2810 to 336.2818 apply shall begin actual construction without a permit to install issued under R. 336.2801(1)(a) that states that the major stationary source or modification will meet those requirements. *See also* 40 C.F.R. § 52.21(a)(2)(iii).
8. Michigan Admin. Code R. 336.2802(4) provides that this part applies to the construction of a new major sources and major modifications to existing major sources in the following manner: (a) . . . a project is a major modification for a regulated new source pollutant if it causes both of the following types of emissions increase: (i) significant emissions increase and (ii) significant net emissions increase.
9. Michigan Admin. Code R. 336.2801(cc)(i)(A) defines a "major stationary source" as, among other things, a fossil fuel-fired steam electric plant of more than 250 million British Thermal Units per hour (mmbtu/hr) heat input that emits, or has the potential to emit, 100 tons per year (tpy) or more of any pollutant subject to regulation under the Act. *See also* 40 C.F.R. § 52.21(b)(1)(i)(a).
10. Michigan Admin. Code R. 336.2801(aa)(i) defines a "major modification" as any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of a regulated pollutant and a significant net emissions increase of that pollutant from the major stationary source. *See also* 40 C.F.R. § 52.21(b)(2)(i).

11. Michigan Admin. Code R. 336.2801(rr) defines “significant emissions increase” for a regulated new source review pollutant as an increase in emissions that is significant for that pollutant. *See also* 40 C.F.R. § 52.21(b)(40).
12. Michigan Admin. Code R. 336.2801 (qq) defines “significant”, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following pollutant emission rates: (A) Carbon monoxide: 100 tons per year. (B) Nitrogen oxides: 40 tons per year. (C) Sulfur dioxide: 40 tons per year. (D) Particulate matter: 25 tons per year of particulate matter emissions; 15 tons per year of PM-10 emissions. *See also* 40 C.F.R. § 52.21(b)(23).

Title V Requirements

13. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), provides that no source may operate without a Title V permit after the effective date of any permit program approved or promulgated under Title V of the Act. EPA first promulgated regulations governing state operating permit programs on July 21, 1992. *See* 57 *Fed. Reg.* 32295; 40 C.F.R. Part 70. EPA promulgated regulations governing the Federal operating permit program on July 1, 1996. *See* 61 *Fed. Reg.* 34228; 40 C.F.R. Part 71.
14. Section 503 of the Act, 42 U.S.C. § 7661b, sets forth the requirement to timely submit an application for a permit, including information required to be submitted with the application.
15. Section 504(a) of the Act, 42 U.S.C. § 7661c(a), requires that each Title V permit include enforceable emission limitations and standards, a schedule of compliance, and other conditions necessary to assure compliance with applicable requirements, including those contained in a state implementation plan. 42 U.S.C. § 7661c(a).
16. 40 C.F.R. § 70.1(b) provides that: “All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements.” *See also* R 336.1211 of the Michigan Air Pollution Control Rules.
17. 40 C.F.R. § 70.2 defines “applicable requirement” to include “(1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including revisions to that plan promulgated in part 52 of this chapter . . .”
18. 40 C.F.R. § 70.7(b) provides that no source subject to 40 C.F.R. Part 70 requirements may operate without a permit as specified in the Act. *See also* R 336.1210 of the Michigan Air Pollution Control Rules.
19. 40 C.F.R. § 70.5(a) and (c) require timely and complete permit applications for Title

V permits with required information that must be submitted and 40 C.F.R. § 70.6 specifies required permit content. *See also* R 336.1210 of the Michigan Air Pollution Control Rules.

20. 40 C.F.R. § 70.5(b) provides that: "Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit." *See also* R 336.1210(2)(b) of the Michigan Air Pollution Control Rules.

Michigan's Title V Requirements

21. EPA promulgated final interim approval of Michigan's Title V program on January 10, 1997. *See* 62 *Fed. Reg.* 1387 (effective February 10, 1997) and 62 *Fed. Reg.* 34010 (effective July 18, 1997). EPA promulgated full approval of Michigan's Title V program on December 4, 2001. *See* 66 *Fed. Reg.* 62949. Michigan's Title V program became effective on November 30, 2001.
22. The Michigan regulations governing the Title V permitting program are codified at R 336, and are federally enforceable pursuant to Section 113(a)(3) of the Act.
23. R 336.1213(2) provides that the Title V permit "shall contain emission limits and standards, including operational requirements and limits that ensure compliance with all applicable requirements at the time of permit issuance."
24. R 336.1210(1) provides that "a person shall not operate any emission unit located at a stationary source required to obtain a renewable operating permit under R 336.1211, except in compliance with all applicable terms and conditions of a renewable operating permit, unless a timely and administratively complete application for a renewable operating permit has been received by the department in accordance with the following provisions of [R 336.1210]."
25. R 336.1210(2)(b) provides that "any person who fails to submit any relevant facts or who has submitted incorrect information in an application for a renewable operating permit ... shall, upon becoming aware of the failure or incorrect submittal, promptly submit all supplementary facts or corrected information. Each submittal of any relevant facts or corrected information shall include a certification by a responsible official which states that, based on information and belief formed after a reasonable inquiry, the statements in the submittal are true, accurate, and complete."

FACTUAL BACKGROUND

26. LBWL owns and operates Erickson Generating Station, a coal-fired electric generating facility at 3725 South Canal Rd., Lansing, MI (Erickson Station).
27. The Erickson Station is located in Eaton County, Michigan, which was an area classified as attainment for all criteria pollutants for all time periods relevant to the violations cited herein.
28. The Erickson Station is a fossil fuel-fired steam electric plant with a potential to emit more than 100 tons per year of sulfur dioxide (SO₂), nitrogen oxides (NO_x), carbon monoxide (CO), and particulate matter (PM). The station consists of a coal-fired boiler and turbine for electricity generation. Unit 1 has a net generating capacity of 152 MW and was constructed in 1973.
29. The Erickson Station is a "fossil fuel-fired steam electric plant of more than 250 million British thermal units per hour." Therefore, the station constitutes a "major stationary source" within the meaning of 40 C.F.R. § 52.21(b)(1)(i)(a) and Michigan Rule R 336.2801; and a "major emitting facility" within the meaning of Section 169(1) of the Act, 42 U.S.C. § 7479(1).
30. During an outage that occurred from approximately September 2010 to February 2011, LBWL replaced various boiler and turbine components at Erickson Station Unit 1, including, but not limited to, the secondary superheater and the economizer.
31. During an outage that occurred from approximately October 2012 to December 2012, LBWL replaced various boiler components at Erickson Station Unit 1, including, but not limited to, upgraded waterwall tubing.

VIOLATIONS

Prevention of Significant Deterioration

32. The physical changes and/or changes in the method of operation performed in each outage referred to in Paragraphs 30 and 31, above, resulted in a significant net emissions increase, as defined in the relevant PSD rules, and the Michigan SIP, of SO₂, NO_x, CO, and/or PM.
33. The physical changes and/or changes in the method of operation performed in each outage referred to in Paragraphs 30 and 31, above, constitute a "major modification" under the PSD regulations of 40 C.F.R. § 52.21 and the Michigan SIP.
34. Each outage referred to in Paragraphs 30 and 31, above, is a major modification based on the entire scope of work performed during the outage. In these instances, the entire scope of work performed during the outage is properly considered together when determining whether a modification occurred. In addition, individual

physical changes and/or changes in the method of operation specifically listed above also are major modifications without reference to the rest of the scope of work performed during the outage.

35. For each of the modifications referred to in Paragraphs 30 and 31, above, LBWL failed to obtain a PSD permit as required by 40 C.F.R. § 52.21 and the Michigan SIP.
36. LBWL is in violation of PSD requirements, Section 165 of the Act, 42 U.S.C. § 7475, 40 C.F.R. § 52.21 and the Michigan SIP for constructing major modifications, as referred to in Paragraphs 30 and 31, above, to existing major sources at their Erickson Station without applying for or obtaining the PSD permits and operating the modified facilities without installing BACT or going through PSD review, and installing appropriate emission control equipment in accordance with a BACT analysis.

Violations of Title V.

37. LBWL has failed and/or continues to fail to submit timely and complete Title V permit applications for the Erickson Station with information pertaining to the modifications referred to in Paragraph 30 and 31, above, and with information concerning all applicable requirements, including, but not limited to, the requirement to apply, install and operate BACT for SO₂, NO_x, CO, and PM at the plants and also failed to supplement or correct the Title V permit applications for these plants in violation of Sections 502, 503, and 504 of the Act, 42 U.S.C. §§ 7661a, 7661b, and 7661c; the regulations at 40 C.F.R. Part 70, including, but not limited to, 40 C.F.R. §§ 70.1(b), 70.5(a), (b) and (c), 70.6 and 70.7(b), and Mich. Admin. R 336. LBLW thereafter operated the Erickson Station without PSD requirements and without having an operating permit that requires compliance with PSD requirements or that contains a compliance plan for PSD requirements for which the Facility is not in compliance.

ENFORCEMENT

38. Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides that at any time after the expiration of 30 days following the date of the issuance of a Notice of Violation, the Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the state implementation plan or permit, issue an administrative penalty order pursuant to Section 113(d), or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

39. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides in part that if the Administrator finds that a person has violated, or is in violation of any requirement or prohibition of any rule...promulgated...under...[Title I or Title V of the Act], the Administrator may issue an administrative penalty order under Section 113(d), issue an order requiring compliance with such requirement or prohibition, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

Dated: _____

3/13/15


George T. Czerniak
Director
Air and Radiation Division

CERTIFICATE OF MAILING


I, Loretta Shaffer, certify that I sent a Notice and Finding of Violation, No. **EPA-5-15-MI-02**, by Certified Mail, Return Receipt Requested, to:

Dick Peffley, General Manager
Lansing Board of Water and Light
1232 Haco Drive
Lansing, Michigan 48901

I also certify that I sent a copy of the Request to Provide Information Pursuant to the Clean Air Act by First-Class Mail to:

Barbara Rosenbaum, Supervisor
Compliance and Enforcement Section
Michigan Department of Environmental Quality
Air Quality Division
P.O. Box 30260
Lansing, Michigan 48909

On the 16th day of March 2015.


for Loretta Shaffer, Program Technician
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER: 7011 1150 0000 2640 6417